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THE CORPORATION TRUST COMPANY AND AFFILIATED COMPANIES

The policy of The Corporation Trust Company in all matters relating to the incorporation, qualification, statutory representation, and maintenance of corporations, is to deal with members of the bar, exclusively.

We Are Thirty-Five Years Old

On December 4, 1927 The Corporation Trust Company was thirty-five years of age, the original charter of the Company having been filed on December 4, 1892. Changing "thirty" to "thirty-five" we repeat what we said in The Corporation Journal of December, 1922:

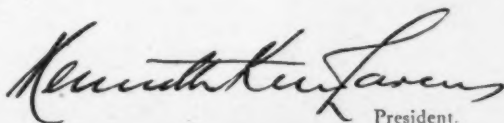
"Time is the true test of the fitness of a business to live.

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Beginning with one small office we now have nineteen offices including our two home offices—a private-elevator floor in the Equitable Building at 120 Broadway, New York, and the one located at 15 Exchange Place, Jersey City. The latest of these nineteen offices to be established, and just opened, is that at

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President.



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THE CORPORATION TRUST COMPANY
120 Broadway, New York

THE CORPORATION JOURNAL

Edited by John H. Sears of the New York Bar

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The Corporation Journal is published by The Corporation Trust Company monthly, except in July, August and September. Its purpose is to provide, in systematic and convenient form, brief digests of significant current decisions of the courts, and the more important regulations, rulings or opinions of official bodies, which have a bearing on the organization, maintenance, conduct, regulation, or taxation of business corporations. It will be mailed regularly, postpaid and without charge, to lawyers, accountants, corporation officials, and others interested in corporation matters, upon written request to any of the company's offices (see next page).

When it is desired to preserve the Journal in a permanent file, a special ring binder will be furnished at cost (\$2) and thereafter, before mailing, each copy will be punched to fit the binder.

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THE CORPORATION TRUST COMPANY

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Having offices and representatives in every state and territory of the United States and every province of Canada and a large, trained organization at Washington, this company —

Being incorporated under the Banking Law of New York, and its affiliated company incorporated under the Trust Company Law of New Jersey, the combined assets always approximating a million dollars, this company —

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—furnishes, under attorney's direction, the statutory office or agent required for either domestic or foreign corporation in any jurisdiction;

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Is Distrust of Corporations Disappearing?

In these days of intolerance of so many things, is it possible that prejudice against corporations as such is waning? It only seems a short time ago that we had throughout the land a great hue and cry against corporations. Remember the many cartoons of the giants in marked clothes supposed to represent the monster corporations, the "trust buster" and the oratory. We still have the extra taxation in various forms and the many restrictive laws that have resulted from popular prejudice. But the blatant talk, the scurrilous printed word, the sneer against everything corporate—are they going? It seems to be a fact that they are. So calm and careful an observer as our Secretary of the Treasury

states that much of the distrust which formerly existed against corporate organizations is disappearing. "There is, too," says Mr. Mellon, "the further fact that corporations are not owned by a few wealthy people, but by millions of stockholders, many of them persons of small means, who find they can secure a surer return on their money through investment in some useful and well-run enterprise, than in any other way. There is nothing new in what I have been saying, but it is a fact of great significance that this change is taking place; and it is a fact that must be understood in any analysis of our present prosperity in this country." (See interview reported in New York Times Magazine, October 23, 1927.)

Domestic Corporations

Colorado.

Action by reinstated corporation for trespass during period when defunct for failure to pay annual license fees. A detailed statement of the cause of action is not essential, here. Section 2317 of the Colorado Laws provides that on failure for five years to pay annual license fee the corporation shall be deemed "defunct and inoperative". Section 2295, C. L., provides that in all cases of dissolution the directors become trustees of creditors and stockholders, etc. The Supreme Court of Colorado answering its own question as to whether or not the provisions of Section 2317 mean that the corporation is dissolved so that its directors have title to its property, says: "We think rather that the intent of the Legislature was to suspend its operation until payment, because the statute goes on to say 'that any such defunct corporation upon the payment of all such delinquent taxes, * * * shall thereupon

become reinstated, revived, and operative'. But whether we regard the revived corporation as having had continued existence (Bonfils vs. Hayes, 70 Colo. 336, 339, 340; 201 P. 677) or the chose in action, though accrued to the trustees, as having been restored to the corporation, with its other rights, by reinstatement, the result is the same—"there was no error in permitting the corporation to maintain the action." It was contended that the chose in action accrued to the director-trustees, was not assignable, and so could not be acquired by the corporation although it was reinstated under section 2317, before suit thereon was begun. Smith et al. Highland Mary Mining, Milling & Power Co., 259 Pac. 1025. F. S. Luethi, of Boulder and Coen & Sauter, of Sterling, for plaintiffs-in-error. John R. Wolff, of Boulder, for defendant-in-error.

Idaho.

Forfeiture of charter for non-payment of license tax; publication of proclamation of forfeiture essential; validity of deed given after forfeiture and before rehabilitation. Action is to foreclose a purchase money mortgage on real estate sold, the deed having been executed in good faith in the name of the corporation by persons attempting to act as its officers after forfeiture of the corporate charter for failure to pay the annual license tax, and before the rehabilitation thereof, and it is urged in defense that because of that fact the deed was void. The Supreme Court of Idaho after stating that the proclamation by the Governor, and its publication as required by C. S. §§4784 and 4785, are two essential steps in the forfeiture proceedings, and that the record fails to show that the proclamation was ever published, says: "We are of the opinion that respondents, having dealt with appellant as a corporation in executing the mortgage, are now estopped, in an action to foreclose it, from denying that they dealt with appellant as a corporation, or to deny it was a corporation when the mortgage was entered into. * * * The persons who negotiated the mortgage with respondents were acting on behalf of the corporation. They were transacting the business for it. It should be borne in mind that no objection to appellant's status was raised by any of the parties until long after its rehabilitation." And on petition for a rehearing, which was denied: "We think it may be presumed that an act of this nature is done for the purpose of winding up the corporate affairs. * * * it seems to us that an act which is properly within the scope of winding up the corporate affairs, even though exercised in the corporate name, is merely defectively exercised, and not void, if it be shown that the act so done was in fact done by the trustees. * * * Since the trustees allowed it to stand, and the corporation, upon its reinstatement and its succession to the rights of the trustees, has recognized the deed and operated under it, as have the respondents, we think the language of the original opinion, that the deed was not altogether void, is a correct statement of the law." Ferguson Fruit & Land Co. vs. Goodding et ux., 258 Pac. 557. Stephan & North, of Twin Falls, for appellant. James R. Bothwell and W. Orr Chapman, both of Twin Falls, for respondents.

Michigan.

Increase of capital stock. On appeal from the Circuit Court, Wayne County, in Chancery, the Supreme Court of Michigan affirms the decree for plaintiff and sustains the conclusion of the trial court that the provision of Act No. 232, Sec. 2, subd. 9, of the Laws of 1903 that "the amount of the capital stock * * * may be increased * * * by a vote of two-thirds of the capital stock" means two-thirds of the entire capital stock, rather than two-thirds of the number of shares present and voting as contended by the defendants. At an annual meeting a resolution to increase the capital stock of the Morehead Manufacturing Company was declared carried on the affirmative vote of two-thirds of the shares present and voting but of less than two-thirds of the entire number of shares. The hearing below resulted in a decree declaring the attempt to increase the stock ultra vires because it lacked the requisite vote and directing that the excess stock should be canceled. The Supreme Court in affirming says: "The statute appears to be very plain that the capital stock of a corporation may be increased or diminished 'by a vote of two-thirds of the capital stock of the corporation.' If the Legislature intended to require the assent of two-thirds of the entire capital stock to increase or diminish the stock, it could not have used more appropriate language to express it." *Orloff vs. Stott et al.*, 215 N. W. 1. Douglas, Barbour, Brown & Rogers, of Detroit, for appellants other than Ernest C. Stott. Henry C. Walters, of Detroit (Walters, Hicks, Carmichael & Head of Detroit, of counsel), for appellee.

Minnesota.

General purpose clause construed. The Supreme Court of Minnesota here affirms the order of the court below sustaining demurrers of certain stockholders of the defendant corporation to a petition by a receiver for an order assessing them on their alleged double liability. The so-called double liability of stockholders does not apply in the case of Minnesota corporations that are exclusively manufacturing corporations (Art. 10, §3, Constitution). It was held that the company came within the exemption. "The intention of the incorporators, as expressed in the articles is the 'sole criterion' for determining the scope of the company's business". The "scope" as provided in its articles was "to construct, maintain and operate flour and feed mills," to lease or buy and hold necessary real estate, to buy and store grain to be manufactured into flour or wheat, and to sell the manufactured products. The Court says: "In construing the article which now controls decision, the learned trial judge accurately observed that resort must be had to 'a reasonable and not a strained or technical construction,'" and holds, contrary to the receiver's claim, that there was no authority "to construct" as distinguished from "operating," flour and feed mills, or "to buy and store wheat or other grain" except that which the company intended to manufacture into flour or feed. *Sibley County Bank of Henderson vs. Crescent Milling Co. et al.*, 215 N. W. 521. Allen & Fletcher and Thomas Vennum, all of Minneapolis, for appellant. Shaw, Safford, Putnam & Shaw, Paul Carroll, Henry G. Carleton, Andrew N. Johnson, and Thomas E. Sands, Jr., all of Minneapolis, for respondent.

Nebraska.

Stockholders liability: "original" subscribers; payment in property; alleged failure of corporation to publish annual notice of debts. A decree having been rendered by the District Court, Lancaster County, Nebraska, in favor of plaintiff in a suit in equity to recover from the Western Publishing and Engraving Company and its stockholders the amount due on a judgment against the corporation, the stockholders appealed, denying liability. The Supreme Court of Nebraska reversed the decision and dismissed the action. In so doing the court held: that when an individual acquires all the stock of a reorganized corporation with increase of capital stock for all of the stock in the old corporation and other property in lieu of money, reassigning a part of such stock gratuitously to the corporation for resale as a working fund for the transaction of corporate business, such individual is the "original" subscriber to the entire new issue and that if such original subscriber paid for all the new stock in full neither he nor his mesne transferees are liable for unpaid subscriptions; that "the Constitution does not require payment for stock in money as a condition of immunity from liability for unpaid subscriptions. In the exercise of good faith and in the absence of any intention to defraud the corporation or its creditors, property needed for corporate purposes may be sold and received for shares of capital stock. This is the rule adopted in Nebraska in construing and applying the constitutional provision creating liability for unpaid subscriptions"; that plaintiff did not prove over-valuation of the property turned in; and that "in making a prima facie case against stockholders for failure of the corporation to publish annual notice of its debts, it is incumbent on a judgment creditor to prove by a preponderance of evidence the date on which the corporate debt owing to him was credited and default in the publication of notice at that time"—and this plaintiff failed to do. *Thomas vs. Scoutt et al.*, 215 N. W. 140. Letton, Brown and Dibble and Peterson & Devoe, all of Lincoln, for appellants; Sterling F. Mutz and Edward C. Fisher, both of Lincoln, for appellee.

New Jersey.

Salesman's commissions on sales of fire engines during period such sales were subjected to manufacturer's Federal excise tax, the amounts paid on account of such tax being subsequently refunded, having been illegally exacted and collected. The court of Errors and Appeals of New Jersey, affirming the judgment of the court below, holds that the salesman is entitled to his commission on the amounts refunded to the manufacturer-employer by the United States Treasury Department in the absence of proof that the amount of the tax-refunds was in turn refunded to the original customers in cases where the amount of the tax had been added to the selling price, specifically; and this ruling is applied equally in the case of a contract specifying that the salesman's commission was to be computed on the amount of the sale "after the war tax is deducted" as to an earlier contract which made no mention of the tax but under which the commission was nevertheless based on selling

price less the amount of the tax. Story vs. Stutz Fire Engine Co., 138 Atl. 888. Isaiah Matlack, of Asbury Park, for appellant. Joseph M. Turner, of Asbury Park, for respondent.

New York.

Rights of preferred stockholders on dissolution. The New York Supreme Court, Appellate Division, Third Department, after stating the well settled rule that the rights of various classes of stockholders as between one another are purely contractual and that the contract controlling the same is the certificate of incorporation, holds in the instant case that the second preferred stockholders having received payment for their stock at par on dissolution are not entitled to share further, saying: "The question here is not one of failure to define rights or of limitation or extension of rights; it is a question of interpreting the language of the certificate of incorporation which states that 'upon dissolution of the corporation and distribution of its assets the preferred stock shall be paid in full at par before any amount shall be paid on account of the common stock.' The solution of the problem before us depends upon the meaning of the words 'paid in full,' 'at par.' The words above quoted are not ambiguous. The meaning to be ascribed to such language is that the second preferred stockholders should be paid 'in full' and that '*payment in full*' means that they should receive payment 'at par' and that payment made to them when made 'at *par*' 'shall be in full.'" Clark Williams et al., Appellants, vs. Alfred H. Renshaw et al., Respondents, 220 App. Div. 39. Masten & Nichols (John A. Kelly of Counsel), for the appellants. Wilber, Norman & Kahn (Mark W. Norman of Counsel), for the respondents.

Compelling surrender of stock certificates for cancellation. A foreign corporation supplied an individual with money with which to purchase treasury stock of a domestic corporation (the appellant here) to be taken in his name and in the names of others (certificates covering varying numbers of shares) and to be held for and on behalf of the purchasing corporation. This was agreed to and the stock was issued accordingly, without consideration on the part of the nominees. Later the purchasing corporation requested that all of the shares so issued be surrendered so that new certificates in the names of others might be issued. The requested surrender was made by all of those to whom certificates were originally issued except the respondents who failed so to do. Nevertheless the appellant issued new certificates for all the shares involved. These were subsequently transferred to a purchaser with knowledge of the facts. The Court of Appeals in reversing a judgment of the Supreme Court, Appellate Division, First Department (218 App. Div. 818, 218 N. Y. Sup. 834) affirming a judgment of the Supreme Court, Special Term, dismissing the complaint on the ground that defendants were under no duty to plaintiff, says that it thinks the principle that "a corporation may not, where it has issued and recognized two certificates for the same holding, be heard to assert the validity of one and the invalidity of the other, and that the rights of two holders may not be properly settled in the suit, particularly as they are not

here parties (N. Y. & Eastern Tel. & Tel. Co. v. Gt. Eastern Tel. Co., 74 N. J. Eq. 221, 69 A. 528; Id., 75 N. J. Eq. 297, 72 A. 1119)," has no application here, for "In the hands of defendants the certificates, valid on their face, are from their nature liable to abuse. The stock has become fictitious. They have no true ownership therein, but only the indicia of ownership. While their certificates were not fraudulently issued, they now hold them without right. It is against conscience and equity that the certificates should be kept outstanding, and they ought to be cancelled to protect the corporation and its genuine stockholders." Nowy Swiat Pub. Co., Inc., v. Misiewicz et al., 246 N. Y. 58, 158 N. E. 19. David T. Smith and Nichols A. Heymsfeld, both of New York City, for appellant. Louis Ehrenberg and Samuel Okin, both of New York City, for respondents.

Ohio.

Ad interim bond certificates held to be negotiable instruments. The certificates in question called for the delivery to a named person, one Saylor, or her order, of the bonds covered thereby. The original owner indorsed certificates in blank and delivered them to one Manning who in turn sold them. When the certificates were presented for transfer the issuing company refused transfer on advises from the original owner that there was bad faith on the part of her transferee. The Court of Appeals of Ohio, Cuyahoga County, holds that "Whether the certificates be treated as intangible choses in action or as personal property, the record is convincing that their nature was such that the title was subject to transfer"; that "The very purpose of the words 'or order' is that by the act of the original bona fide holder third persons may succeed to the original rights and could therefore enforce them similarly to the first owner of the title of the paper"; and that "This being so, the indorsement in blank by Sarah E. Saylor, and delivery of the certificates for an adequate valuable consideration, was a sufficiency in law for the transfer of title to Manning, and as a consequence, there was no power of rescission after the completion of the transaction by an innocent purchaser for value." Hopple v. Cleveland Discount Co., 157 N. E. 414. Thompson, Hine & Flory, of Cleveland, for plaintiff. Squire, Sanders & Dempsey, of Cleveland, for defendant.

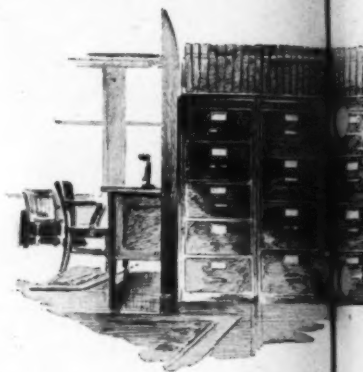
Oklahoma.

Cause of action in case of a dishonored draft arises at place where draft was payable. The defendant-in-error here, located in Carter County, drew its draft on plaintiff-in-error, located in Johnston County, against its funds alleged to have been on deposit with the latter. Service of summons was issued out of the Carter County District Court to the sheriff of Johnston County and by him served there on the president of the plaintiff-in-error, his residence being in that county. Want of jurisdiction in the Carter County Court was properly pleaded, the plea overruled, exception reserved, and the action defended, judgment going to defendant-in-error. Suit was brought in Carter County on the theory that the cause of action arose in part, at least, in that county.

The Supreme Court of Oklahoma, on appeal, reverses and remands with instructions to dismiss for want of jurisdiction, holding that the cause of action arose entirely within Johnston County where the draft was payable, presented, dishonored and sent to protest. The Court in support says: "In *Tuloma Oil Co. vs. Johantgen et al.*, 107 Okl. 92, 230 P. 264, it is held that a cause of action upon a note arises at the place where the note is made payable and the payment is not made. *Bolene Refining Co. vs. Zobisch Oil Co.*, 98 Okl. 202, 224, P. 942. In *Hibernia Nat. Bank vs. Lacombe*, 21 Hun. 166, Id., 84 N. Y. 367, 38 Am. Rep. 518, in a suit upon a draft by a bank in New Orleans upon a bank in New York, the Court held that the place of the refusal of the payment of the draft was the place where the cause of action accrued. See, also, *Sanbourn vs. Smith*, 44 Iowa 152." *Guaranty State Bank of Tishomingo vs. First Nat. Bank of Ardmore*, 260 P. 508. *Cornelius Hardy, of Tishomingo for plaintiff-in-error. H. C. Potterf and Earl Q. Gray, both of Ardmore, for defendant-in-error.*

Saskatchewan, Canada.

Companies IV G—Powers of directors—Issue and allotment of shares—Bona fides—Avoidance. The foregoing is the caption in the Dominion Law Reports to the decision of the Saskatchewan Court of Appeals in *Smith et al. v. Hanson Tire & Supply Co., Ltd., et al.*, [1927] 3 D. L. R. 786. It appears that at a meeting of the directors of a company called by those directors who were minority stockholders and who "took every precaution to keep secret from the other stockholders the fact that they intended to issue shares of the company's stock at this meeting," and at which meeting one member only of the opposing majority group was present, ten new shares were subscribed and paid for by members of the minority group, on resolution duly passed. By this action the minority became the majority, gaining control. The court in holding the allotment of the ten shares invalid and that the holders are to be restrained from voting thereon says: "In the judgment in the New Jersey case [*Way v. American Grease Co.* (1900), 60 N. J. Eq. 263] to which I have referred the following statement by Grey, V.-C., 60 N. J. Eq. at p. 269, occurs—"The power of distributing a new issue does not lie at the mere choice of directors. It is not a perquisite which they may use for their private advantage. They may not overthrow or secure for themselves the control of the corporation by means of a new issue of stock. This is true, whether as a part of the stock authorized by the original incorporation which remains untaken, or as to stock issued after incorporation, on a subsequently authorized increase." I do not find this principle enunciated so clearly in any of the English or Canadian authorities which have been submitted to us, but I think it flows naturally from what they decide and that the language in which it is expressed here indicates properly the limitations which bind the directors of a company, as trustees, when they proceed to an issue of the company's shares." P. H. Gordon, K. C., for appellants. A. M. McIntyre, K. C., for respondents.



Helpfulness—

Helpfulness—when and where you need it—is what The Corporation Trust Company provides for the corporation lawyer. This company does not merely handle for counsel the details of filing incorporation or qualification papers and furnishing a statutory agent. It is not merely an agent for incorporation in Delaware, or any other one state. The excerpts printed below from a letter recently received—from one of the oldest and finest law firms in the Middle West—illustrate:

“ * * * We wish to express our appreciation of the extremely effective and prompt assistance furnished by your office in connection with the above matter. The situation which existed when the matter came to our attention required very prompt action. * * *

* * * Considering the fact that it was necessary to organize two new corporations, under the laws of two different states, and to take all steps necessary in connection therewith, including the drafting of the charter and by-laws, the holding of the necessary meetings of incorporators, subscribers, directors and stock holders, and the making of the reports required by law; and, considering also that it was necessary to accomplish the inter-corporate transfers which were involved, unusual speed and accuracy were required. They were furnished in abundant degree by your organization. * * *

THE CORPORATION

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Readiness to serve, in whatever phase of incorporation or qualification service is needed, in whatever state required—that is what brings to The Corporation Trust Company the appreciation of attorneys such as that expressed in the letter quoted. In files like those shown above (sketched from a photograph of the New York precedent files) the precedents and necessary data and forms for incorporation or qualification in any state or territory of the United States or any province of

Canada are kept constantly up to date and ready for the assistance of any lawyer at any time. And for the filing of papers, when ready, is the company's chain of offices and representatives in every jurisdiction. Because most of the important incorporations of recent years are under the laws of Delaware and such a large majority of them are handled by counsel through The Corporation Trust Company, lawyers sometimes overlook the fact that the same accuracy and despatch which distinguish this company's services in Delaware can be had for any other state when desired.

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Tennessee.

Personal liability of officer for debt of corporation the amount of whose capital stock as fixed in the charter had not been subscribed. Here all of the steps precedent to incorporation had been taken; over 50% of the capital stock, but not all, had been subscribed; the corporation had carried on its business for several years; the creditor was the corporation's landlord to whom the corporation had paid rent from time to time by its checks. There was no evidence of fraudulent misrepresentations inducing credit from him. The Supreme Court of Tennessee, having previously declared that although fully existing as a corporation the capital stock fixed in the charter must be fully subscribed before a Tennessee corporation may lawfully proceed with its general business, says: "But, the question now squarely presented for the first time in Tennessee is whether or not individual liability is incurred by the incorporators or officers when the business of the corporation is proceeded with thus unlawfully." The action here was brought against defendant as an officer, president of the corporation, for the amount of unpaid rent on bankruptcy of the corporation. He was a director and had been one of the original incorporators. Judgment for the defendant officer was reversed by the Court of Appeals which judgment is now reversed by the Supreme Court which says, further: "It will be seen that the holding of the Court of Appeals in this case is practically without decision support, other than dicta expressions. How and upon what principle can the doctrine be sustained that those who conduct a corporate business and incur debts are personally liable therefor unless the capital fixed in the articles of incorporation has been fully subscribed, except where it be found that there is (1) no corporation to be charged; (2) fraud; or (3) express statutory provisions therefor?" *Crouch vs. Gray*, 290 S. W. 391. *Miller & Winston*, of Johnson City, for complainant, *Adam B. Crouch*. *Barnes & Lewis*, of Johnson City, for defendant, *Jos. P. Gray*.

Washington.

Action on an account receivable assigned to another by a corporation whose annual license fee last due has not been paid may be maintained by the assignee. An account was duly assigned to the plaintiff here who brought suit demanding judgment. The lower court dismissed the complaint, it having been alleged in the answer and admitted in reply that the assignor corporation had not paid its last annual license fee, the court basing its judgment on that part of Sec. 3842, Rem. Comp. Stat., which reads as follows: "No corporation shall be permitted to commence or maintain any suit, action, or proceeding in any court of this state, without alleging and proving that it has paid its annual license fee last due," and holding, in effect, that as the corporation could not have sued had there been no assignment, the plaintiff as assignee had no greater rights. The Supreme Court of Washington reverses the dismissal saying that the statute referred to "has been discussed and construed from many angles in our former cases, only one of which is in point upon the question here," this being *Pacific*

Drug Co. vs. Hamilton, 71 Wash. 469, 128 P. 1069, on which the court relies, without more, for its reversal. It was there held that as "the concern was not suing" its right to maintain the action was not before the court and no inquiry need be made as to whether the license fee had or had not been paid. Marshall vs. Pike et ux., 260 P. 531. Van C. Griffin, of Seattle, for appellant. Frank C. Neal, L. R. Bonneville, and B. D. Scott, all of Tacoma, for respondents.

Foreign Corporations

Massachusetts.

Service of process on a mere soliciting agency of limited authority is insufficient on which to base a judgment in personam against foreign corporation in Federal court in case involving corporate matters not cognizable by state courts. The Circuit Court of Appeals, First Circuit, vacates the decree of the District Court in Erikson v. Frink Co., Inc., 16 F. (2d) 498 (The Corporation Journal, April, 1927, page 371), with directions to dissolve the preliminary injunction there granted and to dismiss the suit. (The company was restrained from proceeding further with a suit brought in another United States District Court in an alleged patent infringement case.) After stating that "Jurisdiction of the federal courts is not created by and does not depend upon the statutes of the several states (Barrow Steamship Co. v. Kane, 170 U. S. 100, 111)" and that "no state can by legislation determine what shall constitute presence of a foreign corporation with respect to matters not within the jurisdiction of the state or its courts," says that "the agency of Fitts-Morse, Inc. [on whom process was served], had its limitations. It was a mere soliciting agent. Its authority was no greater than the authority of a traveling salesman sent out to solicit and take orders for a wholesale grocery house. It has never been contended that service upon such a traveling salesman was service upon his employer in any jurisdiction. * * * Fitts-Morse, Inc., did not represent the defendant in any corporate capacity. Its authority, therefore, to represent the defendant for the purpose of service of process, should be confined to suits involving the ordinary commercial transaction and other matters of a kindred character concerning which it may fairly be said to represent Frink Co., Inc. The instant action is not of this class. It is not even of a class cognizable by the courts of the commonwealth. Our attention has not been called to any case, and we here found none, wherein a mere sales agent, authorized to solicit and transmit orders, has been so far held to be the agent of a foreign corporation that service upon it is held to be sufficient service upon the corporation as to bind it in a judgment in personam in any corporate matter or matters not cognizable by the courts of ordinary state jurisdiction." Frink Co., Inc., v. Erikson, 20 F. (2d) 707. Harry Lea Dodson, New York City (Zell G. Roe, and Dodson & Roe, all of New York City, on the brief), for appellant. George W. Woodworth, of Boston, Mass., for appellee.

Ohio.

Employment regularly within a state by a corporation of a mechanic to inspect and test, and adjust and repair machines manufactured by it and already installed within the state constitutes "doing business" there by the corporation. The case involves the sufficiency of the service of summons. The district court quashed the return thereon on the ground that the defendant corporation was not engaged in such business in Ohio as made it amenable to the service of process therein. The Circuit Court of Appeals for the Sixth Circuit reverses the judgment because (and solely because) the "defendant maintains an expert mechanic in Ohio, who periodically visits the plants where defendant's machines are used, and adjusts and repairs them so they will render the maximum service of which they are capable—this whether they were sold by defendant to the plant, or whether they were acquired second-hand, and also regardless of when they were installed; that is, after they have been installed, successfully tested, demonstrated, and paid for. The difference between this course of conduct and that in the York Case [York Mfg. Co. v. Colley, 247 U. S. 21] is marked. What was done in that case was so inherently related to the contract of sale as to be dominated by it; there was in fact no final delivery of the machine and no completion of the sale until that service [erecting and installing an ice machine and submitting it to practical test in operation] was performed. What defendant's demonstrator does is keep the machines in order after they have been installed, tested, demonstrated, and paid for, whether they were bought directly from his company or not, and regardless of the length of time they have been in use. This additional work, we think, is doing business within the state." *Cone v. New Britain Mach. Co.*, 20 F. (2d) 593. *James G. Stewart and Hugh L. Nichols* (of Nichols, Morrill, Stewart and Ginter), both of Cincinnati (*Gatch, McLaughlin & Gatch*, of Cincinnati, on the brief), for appellant. *Murray Seasongood* (of Paxton, Warrington & Seasongood), of Cincinnati (*Robert P. Goldman*, of Cincinnati, and *Kirkham, Cooper, Hungerford & Camp*, of New Britain, Conn., on the brief), for appellee.

Taxation

Pennsylvania.

Statute placing valuation of \$100 on each no-par value share of stock for purposes of the bonus tax held to be constitutional. The Supreme Court of Pennsylvania holds that the Act of July 12, 1919 (P. L. 914), authorizing the issue of shares of stock without par value, and by Section 11 of which each such no-par value share shall be equivalent for purposes of the bonus tax of a share having a par value of \$100, is constitutional and affirms the judgment of the court below "in valuing defendant's no-par capital stock at \$100 per share when determining the amount of bonus which should be paid on the various increases thereof." The Court differentiates *Commonwealth v. Wayne Sewerage Co.*, 287 Pa. 42, 43; 134 A. 390, 391, since there the company was in-

incorporated before the passage of the 1919 Act, and was not "reorganized, merged, or consolidated with any other corporation," but had simply changed stock with a par value into shares of no-par value as authorized to do by the Act of May 21, 1923 (P. L. 288). The Court in conclusion says: "The Act of April 20, 1927, which was passed to 'amend, revise, consolidate and change the laws relating to bonus,' is prospective only, and has no relevancy here." *Commonwealth v. Budd Wheel Co.*, 138 A. 915. Charles Denby, Jr., and Henry S. Drinker, Jr., both of Philadelphia, for appellant. Philip S. Moyer, Dep. Atty. Gen., and Thomas J. Baldrige, Atty. Gen., for the Commonwealth.

South Carolina.

License or excise tax on dealers in tobacco products held not to be violative of the Federal and State Constitutions. Motion to enjoin the South Carolina Tax Commission from enforcing against complainant dealers in tobacco products the provisions of the Tax Act of April 22, 1927 (35 Stats. at Large, p. 121), is denied. The Act provides for the payment of the graduated tax (weight or retail selling price) by affixing stamps of proper denominations to the boxes or other individual packages or containers of cigars, cigarettes, chewing tobacco, etc., by the manufacturer (if within the state) thereof when sold, or by the jobber, wholesaler, or retailer within a stated period, but before selling in any event, after receipt for resale from a manufacturer without the state. Injunction was sought on the grounds that the statute violates (1) the commerce, and (2) the due process and equal protection, clauses of the Federal Constitution, and (3) the uniformity of tax rate clause of the State Constitution, which clause authorizes a graduated license on occupations and business. The United States District Court, Eastern District of South Carolina, holds as to (1), that there is no interference with interstate commerce as, to the extent of imports, the tax is imposed in relation to particular articles after they have come to rest in South Carolina (*Sonneborn Bros. vs. Cureton*, 262 U. S. 506,—disposing of "original package" doctrine plea also), and the statute itself provides for a credit for the value of stamps affixed on containers sold and shipped by the affixer to points without the state; as to (2), that the fact that in the case of imported products the wholesaler or retailers must unpack and in some cases remove parafin paper and then stamp, reenclose in parafin paper and repack, whereas in the case of products manufactured within the state the stamping is done by the manufacturer with no burden on the wholesaler or retailer, is not an unreasonable or unduly discriminatory requirement for collection of the tax to prevent fraud on the revenue—(a discount is allowed on quantity purchases of stamps, allegedly as compensation for the trouble and expense involved in the necessary unpacking, stamping, and repacking by wholesalers and large dealers); and as to (3), after stating that a Federal court is reluctant to declare a state statute violative of the State Constitution the question not having been considered, as it had not been here, by the state courts, that if the tax be considered a graduated occupation or business tax it is expressly authorized, and that if it be considered a tax on sales it is manifestly imposed at uniform rates and the fact that it is imposed but

once (on the first to sell or have for sale within the state) on a particular article, as on a box of cigars or on a package of cigarettes, does not violate uniformity because "It is a matter of common knowledge that a tax of this sort is shifted from dealer to dealer and is ultimately paid by the consumer, and we can think of no better way of securing uniformity in a sales tax than by imposing the tax on the article itself, as is in effect done in this case." *Doscher et al. v. Query, et al.*, South Carolina Tax Commission, and *J. S. Pinkussohn Cigar Co. vs. Same*, 21 F. (2d) 521. *Shimel & Rittenberg, J. D. E. Meyer, and Stoney & McGowan*, all of Charleston, S. C., for complainants. *John M. Daniel, Atty. Gen. of South Carolina, Cordie Page, Asst. Atty. Gen., and J. Fraser Lyon, of Columbia, S. C.*, for defendants.

Wisconsin.

Inclusion of interest on United States bonds in gross income as base for annual 3% license fee for domestic life insurance companies is invalid. On November 21, 1927 the United States Supreme Court held that interest received on United States bonds is not to be included in the gross income which may be made the base for a state privilege or license fee or tax. The statute under the court's consideration is that of Wisconsin (Sec. 76.34, Wisc. Stats. 1923; Sec. 1211-35, Stat. 1919; Sec. 51.32, Stat. 1917) imposing an annual license fee on domestic life insurance companies of 3% of the "gross income from all sources" except real estate rentals and policy and contract premiums, such fee being in lieu of all other taxes authorized by the laws of the state other than taxes on real estate. The state contended that it may require a domestic corporation to pay privilege, franchise or license taxes measured by gross income, although partly derived from United States bonds. The court says "Section 76.34 undertakes to impose a charge not measured by dividends paid, as in *Home Insurance Co. v. N. Y.*, 134, U. S. 594, nor by net income, as in *Flint v. Stone-Tracy Co.*, 220 U. S. 107; and those cases are not controlling. The distinction between an imposition the amount of which depends upon dividends or net income and one measured by gross income is clear. *U. S. Glue Co. v. Town of Oak Creek*, 247 U. S. 321, 328, and earlier opinions there cited." And, in reversing the judgment below, concludes: "Here the statute undertook to impose a charge of 3 per cent. upon every dollar of interest received by the Company from United States bonds. So much, in any event, the State took from those very receipts. This amounts, we think, to an imposition upon the bonds themselves, and goes beyond the power of the State." *Northwestern Mutual Life Insurance Co., Plaintiff-in-error, v. State of Wisconsin, Defendant-in-error.* Nos. 75 and 76—October Term, 1927.

Notes

With the beginning of its thirty-sixth year of business The Corporation Trust Company is opening the nineteenth office in its system. The new office is at Atlanta and Mr. James L. Watson, formerly of the New York office staff, is in charge. Its territory comprises the states of Georgia, Florida, Alabama, and North and South Carolina. The address is Healey Building. Telephone, Ivy 5179.

Three changes in address of offices of The Corporation Trust Company have recently been made. The Kansas City office is now in the R. A. Long Building; the Washington office at 815 Fifteenth Street; the Boston office in the Atlantic National Bank Building.

Pacific Petroleum Products Company is the name of a new corpora-

tion incorporated in Delaware December 9. The capitalization is \$25,000,000 Preferred Stock and 5,000,000 shares of Common Stock without par value. The papers were filed for counsel by The Corporation Trust Company, which company has also been appointed statutory agent in Delaware.

An increase in capitalization from \$1,400,000 to \$4,000,000 was filed in Delaware for counsel for the International Shoe Company, a St. Louis corporation, by The Corporation Trust Company.

479 corporations were organized under the laws of Delaware from November 20 to December 20, as against 443 for the preceding 30-day period, and 392 for the corresponding period of 1926.

Some Important Matters for January and February

This calendar does not purport to cover general taxes or reports to other than state officials, or those we have been officially advised are not required to be filed. *The State Report and Tax Service* maintained by *The Corporation Trust Company System* sends timely notice to attorneys for subscribing corporations of report and tax matters requiring attention from time to time, furnishing information regarding forms, practices and rulings.

ALABAMA—Annual application for permit to do business, due on or before February 1—Domestic and Foreign Corporations.

Annual Franchise Tax Returns due between January 1 and March 15—Domestic and Foreign Corporations.

ALASKA—Annual Report due within 60 days from January 1—Foreign Corporations.

ARKANSAS—Franchise Tax Report due on or before March 1—Domestic and Foreign Corporations.

CALIFORNIA—Report on General Franchise due within 10 days after first Monday in March—Domestic and Foreign Corporations.

- COLORADO—Annual Report due within 60 days after January 1—Domestic and Foreign Corporations.
- CONNECTICUT—Annual Report on or before February 15—Domestic and Foreign Corporations.
- DELAWARE—Annual Report due on or before first Tuesday in January.—Domestic Corporations.
- DISTRICT OF COLUMBIA—Annual Report due between January 1 and January 20.—Domestic Corporations.
- GEORGIA—Registration and Payment of License Tax due January 1. Delinquent April 30—Foreign Corporations.
- ILLINOIS—Annual Report due between February 1 and March 1—Domestic and Foreign Corporations.
- INDIANA—Annual Report due during January—Foreign Corporations. Annual Capital Stock Report due on or before March 1—Foreign Corporations engaged in manufacturing.
- KANSAS—Annual Report and Franchise Tax due between January 1 and March 31—Domestic and Foreign Corporations.
- KENTUCKY—Annual Report due on or before February 1—Domestic and Foreign Corporations.
- LOUISIANA—Capital Stock Statement and Tax due on or before March 1—Foreign Corporations.
- MAINE—Annual License Fee due on or before March 1—Foreign Corporations.
- MARYLAND—Annual Report due between January 1 and March 15—Domestic and Foreign Corporations.
- MASSACHUSETTS—Annual Report of Information for Income Tax due between January 1 and March 1—Domestic and Foreign Corporations.
- MISSOURI—Annual Return of Net Income due between January 1 and March 15—Domestic and Foreign Corporations.
Annual Franchise Tax Report and Tax due on or before March 1—Domestic and Foreign Corporations.
Return of Information at Source due on or before February 1—Domestic and Foreign Corporations.
- MONTANA—Annual Report due between January 1 and March 1—Foreign Corporations.
Annual Return of Net Income due between January 1 and March 1—Domestic and Foreign Corporations.
- NEW YORK—Annual Franchise Tax payable on or before March 15—Domestic and Foreign Real Estate and Holding Corporations, Transportation and Transmission Companies, other than those subject to the so-called income tax.
Annual Franchise Tax Report, Real Estate, Holding Corporations, Transportation and Transmission Companies, due between January 1 and February 15—Domestic and Foreign Corporations.
Form 42 C T, Section 182 of the Tax Law.

- NORTH CAROLINA**—Income Tax Return and Return of Information due on or before March 15—Domestic and Foreign Corporations.
- NORTH DAKOTA**—Annual Income Tax Return due between January 1 and March 15—Domestic and Foreign Corporations.
- OHIO**—Report to Industrial Commission due during January—Domestic and Foreign Corporations.
- PENNSYLVANIA**—Corporate Loan Report due between January 1 and February 28—Domestic and Foreign Corporations.
 Capital Stock Report due on or before March 15—Domestic and Foreign Corporations.
 Bonus Report due on or before March 15—Foreign Corporations.
- RHODE ISLAND**—Corporation Tax Return due on or before March 1—Domestic and Foreign Corporations.
 Annual Report due during February—Domestic and Foreign Corporations.
- SOUTH CAROLINA**—Annual Statement due on or before January 31—Foreign Corporations.
 Annual License Tax Report due during month of February—Domestic and Foreign Corporations.
 Annual Income Tax Return due on or before March 15—Domestic and Foreign Corporations.
- SOUTH DAKOTA**—Annual Capital Stock Report due between January 1 and March 1—Foreign Corporations.
- TENNESSEE**—Annual Return of Supplemental Information due between January 10 and March 15—Domestic and Foreign Corporations.
- TEXAS**—Annual Capital Stock Report due between first day of January and the fifteenth day of March—Domestic and Foreign Corporations that are required to pay Annual Franchise Tax.
- UNITED STATES**—Annual Return of Net Income due on or before March 15—Domestic Corporations and Foreign Corporations having an office or place of business in the United States.
- VERMONT**—Annual License Tax Return and Payment due on or before March 1—Domestic and Foreign Corporations.
 Annual License Tax payable on or before March 1—Domestic and Foreign Corporations.
 Extension of Certificate of Authority due on or before April 1—Foreign Corporations.
 Annual Report due on or before March 1—Domestic Corporations.
- VIRGINIA**—Annual Registration Fee due on or before March 1—Domestic and Foreign Corporations.
 Annual Franchise Tax due on or before March 1—Domestic Corporations.
- WISCONSIN**—Income Tax Return due on or before March 15—Domestic and Foreign Corporations.

The Corporation Trust Company's Supplementary Literature

In connection with the various departments of its business The Corporation Trust Company publishes the following supplementary pamphlets and forms, any of which it is always glad to send without charge to readers of The Journal:

Analysis of Recent Amendments to Delaware Corporation Laws. Complete text of these important new features together with explanation of their effect.

What Constitutes Doing Business. A 128-page pamphlet containing brief digests of 301 decisions selected from those in the various states as indicating what is construed in each state as "doing business."

Six Points to Watch in Incorporation. A valuable reminder for attorneys when planning a corporate structure or drafting incorporation papers.

Two Notable Certificates of Incorporation. Certificate of Standard Oil Company of California, and that of Tide Water Associated Oil Company.

Certificate of Incorporation of Pullman Incorporated. Pullman Incorporated was the first internationally known corporation to take advantage of the new features of the Delaware law as amended in 1927, and its charter will therefore be of great interest to lawyers.

Safeguarding Stock Transfers. Dealing with the many pitfalls in transferring stock on a corporation's books.

Delaware Corporations. Presents in convenient form a digest of the Delaware corporation law, its advantages for business corporations, the attractive provisions for non par value stock, and a brief summary of the statutory requirements, procedure and costs of incorporation.

Shares Without Par Value. Explains some of the advantages of such shares and presents brief synopses of the statutory provisions for issue in the 39 states in which they are authorized.

Paying Too Much in Taxes. Shows how taxpayers may unwittingly make themselves liable for more income tax than is necessary.

When Doing Business Is Illegal. A brief discussion, illustrated by many actual examples taken from the court records of various states, of the difference between "Interstate" and "Intrastate" business.

Revenue Act of 1926. A reprint of the law as furnished to subscribers to The Federal Tax Service of this Company.

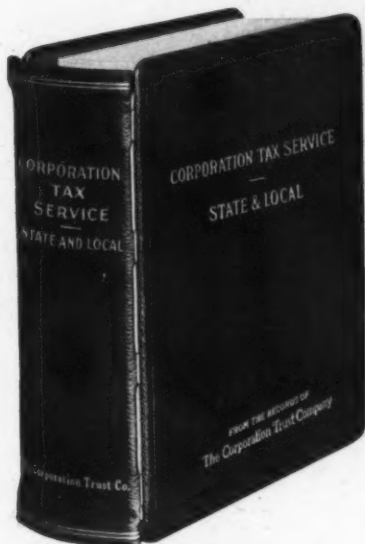
Amendments to New Jersey Corporation Laws. Full text of the ten amendments passed at the legislative session of 1927.

Transfer Requirements Chart. This supplement to The Stock Transfer Guide and Service shows the classifications into which requests for stock transfers are divided and how the principal requirements for each classification may be determined, either by the transfer agent or the individual desiring transfer made.

Lawyers' Preliminary Work Sheets. Large sheets for the double purpose of reminding counsel of all the various points on which he may need information from his client before starting the preparation of incorporation papers, and furnishing a convenient medium on which to record such information in rough but systematic form for later reference.

The Corporation Tax Service

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FOR each different state, and for any one city in the state desired by the subscriber, this Service presents and keeps constantly up to date the statutory and official requirements with respect to all taxes levied on or payable by ordinary business corporations, and all reports required to be filed by such corporations. For each tax it shows of what corporations that tax is required, the exemptions, basis of tax rate, when to be paid and to whom, how to obtain extensions, how and where to appeal from the assessing body or official, reports required and where and when to be filed, and all the applicable official opinions, rulings, definitions and court decisions, and text of all governing law sections. Write today for details and prices.

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